

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL J. KRZEMINSKI,

Plaintiff-Appellant,

v

FARMERS INSURANCE EXCHANGE, BLUE
CROSS BLUE SHIELD OF MICHIGAN, and
BLUE CARE NETWORK OF MICHIGAN,

Defendants-Appellees.

UNPUBLISHED

September 30, 2004

No. 247270

Kent Circuit Court

LC No. 02-002960-NF

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order setting aside a default entered against defendant Blue Cross Blue Shield of Michigan (BCBSM). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was involved in an automobile accident and filed suit seeking benefits from defendants Farmers Insurance Exchange, Blue Care Network of Michigan, and BCBSM. Due to confusion over the identity of BCBSM's registered agent, BCBSM did not prepare and mail an answer to the complaint to the court until the day the answer was due. On that same day, plaintiff requested and obtained a default against BCBSM. Plaintiff did not serve BCBSM with notice of the default as required by MCR 2.603(A)(2)(b).

BCBSM moved to set aside the default, arguing both that plaintiff's failure to provide notice of entry of the default was a substantial procedural irregularity that constituted good cause for setting aside the default, and that it had a reasonable excuse, i.e., confusion over the identity of its registered agent, for failing to file an answer in a timely manner. BCBSM also supplied an affidavit of meritorious defense in which it stated that it provided only vision coverage to plaintiff. The trial court granted the motion, concluding that plaintiff's failure to serve notice of the default constituted a substantial procedural irregularity that justified setting aside the default, and that BCBSM demonstrated that it had a meritorious defense.

A motion to set aside a default or a default judgment is to be granted only if the movant shows good cause and files an affidavit of meritorious defense. MCR 2.603(D)(1). Good cause consists of: (1) a procedural defect or irregularity; or (2) a reasonable excuse for the failure to comply with the requirements that created the default. Manifest injustice is not a discrete

occurrence that can be assessed independently. It is the result that would occur if a default were allowed to stand after a party had demonstrated good cause and a meritorious defense. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999). We review a trial court's decision on a motion to set aside a default or a default judgment for an abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

The construction and interpretation of court rules present a question of law that is reviewed de novo. *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 642; 617 NW2d 373 (2000).

Plaintiff argues that the trial court erroneously interpreted and applied MCR 2.603(A)(2)(b), and therefore erred in setting aside the default against BCBSM. We disagree and affirm. MCR 2.603(A)(2) requires that notice of the entry of a default must be sent to all parties who have appeared in the action, and to the defaulted party. The failure to provide notice of the entry of a default constitutes a substantial defect in the proceedings that merits a finding of good cause to set aside the default. *Bradley v Fulgham*, 200 Mich App 156, 158-159; 503 NW2d 714 (1993); *Gavulic v Boyer*, 195 Mich App 20, 25; 489 NW2d 124 (1992), overruled in part on other grounds, *Allied Electric Supply Co v Tenaglia*, 461 Mich 285; 602 NW2d 572 (1999). Plaintiff correctly notes that in both *Bradley, supra*, and *Gavulic, supra*, a default judgment was entered in addition to a default; however, application of the notice rule set out in MCR 2.603(A)(2) is not limited to cases in which both a default judgment and a default have been entered. Plaintiff's assertion that the rule announced in *Bradley, supra*, and *Gavulic, supra*, has been rendered obsolete by *Alken-Ziegler, supra*, is contradicted by recent precedent. In *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 534-537; 672 NW2d 181 (2003), another panel of this Court, citing *Alken-Ziegler, supra*, found that the failure to notify the defaulted party of the entry of a default as required by MCR 2.603(A)(2) was a procedural irregularity that constituted good cause for setting aside the default and default judgment. Here, plaintiff failed to notify BCBSM of entry of the default as required by MCR 2.603(A)(2). The trial court did not err in its interpretation and application of the court rule and did not abuse its discretion by setting aside the default. *Barclay, supra*; *Park, supra*.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood